



# Oklahoma International Trade Bulletin

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Volume XXIII, Number 8

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## The Bureau of Industry and Security Outreach and Educational Services Division

**Cosponsored by: Oklahoma District Export Council  
Presents**

***“Complying with U. S. Export Controls”  
and***

***“Intermediate Deemed Export”***  
**July 18-20, 2006 - Tulsa, Oklahoma**  
**Doubletree Hotel at Warren Place**

### **Complying with U.S. Export Controls (July 18-19)**

The two-day program is led by BIS's professional counseling staff and provides an in-depth examination of the Export Administration Regulations (EAR). The program will cover the information exporters need to know to comply with U.S. export control requirements on commercial goods. We will focus on what items and activities are subject to the EAR; steps to take to determine the export

licensing requirements for your item; how to determine your export control classification number (ECCN); when you can export or reexport without applying for a license; export clearance procedures and record keeping requirements; Export Management System (EMS) concepts; and real life examples in applying this information. Presenters will conduct a number of “hands-on” exercises that will prepare you to apply the regulations to your own company's export activities.

This program is well suited for those who need a comprehensive understanding of their obligations under the EAR. Technical, policy, and enforcement professionals from BIS, as well as specialists from other agencies such as the Office of Foreign Assets Control will participate in certain programs.

### **Intermediate Deemed Export (July 20)**

This half-day program has been developed for exporters who have basic

knowledge of the Export Administration Regulations and have a solid understanding of how to apply the regulations and to classify technology properly. This highly intensive program will integrate practical exercises and presentations about the appropriate sequence of analysis in assessing deemed export licensing requirements. In addition, time will be spent on discussing the current licensing policies and potential changes to them. Participants will learn how to find and use those sections of the EAR that apply to deemed export transactions. Topics covered will include how to determine when deemed export licenses are necessary and how to prepare supporting documentation that accompanies a license application. This workshop is perfect for an export compliance specialist working in industry, in university administration or in a government research laboratory.

### **About the Instructors**

The instructors are experienced export policy specialists, engineers and enforcement personnel from BIS's Washington, D.C. headquarters and field offices, as well as representatives from other U.S. government agencies such as U.S. Department of Treasury's Office of Foreign Assets Control (OFAC) and Census Bureau's Office of Foreign Trade. The instructors will be available throughout the seminar to answer your questions on how the export regulations affect the

export activities of your organization or client.

### **Location/time**

The program will be held at the Doubletree Hotel at Warren Place, 6110 South Yale, Tulsa, Oklahoma. Registration and continental breakfast for the two-day program will begin at 7:30am on July 18, 2006. The two-day program will begin at 8:00am and end at 4:30pm on both days. Registration and continental breakfast for the half-day program will begin at 7:30 on July 20, 2006. The half-day program will begin at 8:00am and end at noon.

### **Accommodations**

A special conference rate of \$66 (plus tax) for a single/double room has been arranged with the Doubletree Hotel at Warren Place, 6110 South Yale, Tulsa, Oklahoma. Please make your reservations directly with the hotel by calling (918) 495-1000 or (800) 879-6552. Mention "*Oklahoma District Export Council*" to receive the special conference rate.

### **Registration**

Advance registration is required for the seminar and space is limited. The registration fee for the two-day Complying with U.S. Export Controls is \$295.00 per person. The fee for the two-day Complying with U.S. Export Controls and the half-day Intermediate Deemed Export is \$395.00 per person. These fees include

continental breakfasts, coffee breaks, lunches and materials for the two-day or the two and a half day program. The fee for the half-day Intermediate Deemed Export program only is \$125.00 per person. The fee includes continental breakfast, coffee break, and materials for the half-day program. The registration fee is not refundable after July 12, 2006. Substitutions may be made at any time. Registration will be accepted until Friday July 14, 2006, or until registration is filled. For information regarding registration, please contact Jim Williams at (918) 581-7650; Ashley Wilson at (405) 608-5302 or (800) 879-6552, extension 223; or by E-mail: [oklahomacity.office.box@mail.doc.gov](mailto:oklahomacity.office.box@mail.doc.gov).

To guarantee placement for this seminar make your check payable to the Oklahoma District Export Council and mail your check and registration to 301 N.W. 63<sup>rd</sup> Street, Suite 330, Oklahoma City, Oklahoma 73116. **For your convenience a registration form is included on page 3 of this newsletter**

### **Other Questions?**

For more information or questions on the topics to be covered, please call BIS's Outreach and Educational Services Division at (202) 482-6031 or contact either of our offices (918) 581-7650; (405) 608-5302 or (800) 879-6552, extension 223; or by E-mail: [oklahomacity.office.box@mail.doc.gov](mailto:oklahomacity.office.box@mail.doc.gov).

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# ***Bureau of Industry and Security's (BIS's) Introduction to U. S. Export Control Law***

## ***U. S. EXPORT CONTROLS***

### ***Export Enforcement Introduction and Mission***

The Bureau of Industry and Security (BIS) is a part of the U. S. Department of Commerce. The Export Enforcement arm of BIS protects U. S. national security, foreign policy, and economic interests by educating parties to export transactions on how to improve export compliance practices, interdicting illegal exports, investigating violations, and prosecuting violators of export control laws. At the same time, Export Enforcement works to

avoid impeding legitimate trade. Export Enforcement has federal law enforcement authority and its special agents work with BIS licensing officials and policy staff to deter the export of items which, in the hands of unreliable users, can prove damaging to U. S. national security and foreign policy interests. Export Enforcement personnel work closely with Department of Commerce lawyers in the Office of Chief Counsel for Industry and Security and Department of Justice lawyers in U. S. Attorneys' offices to bring enforcement actions against violators of U. S. export control laws.

### ***Where Are We Located?***

In addition to our Headquarters at the Department of Commerce in Washington, D.C., Export Enforcement has nine satellite offices that have areas of responsibilities covering the entire United States. Field Offices are located in: *New York, Boston, Chicago, Dallas, Houston, Los Angeles, Miami, San Jose, and Washington, D.C.*

The Office of Export Enforcement also has Export Control Attaches located in 5 overseas locations. Export Control Attaches are Office of Export Enforcement personnel on detail to the Foreign

Commercial Service and report directly to the Embassies to which they are posted, with direction and oversight by the Office of Export Enforcement's Operations Division. Attaches are located in: *Beijing, China; Hong Kong, China; New Delhi, India; Moscow, Russia; and Dubai, United Arab Emirates.*

#### ***Export Control Law***

A number of executive branch agencies have responsibilities for regulating exports from the United States. The Department of Commerce is responsible for controlling the widest range of goods and technology, all of which are capable of being used for commercial purposes but which also present foreign policy or national security concerns. BIS implements export controls for the Department of Commerce through the Export Administration Regulations (EAR). Other federal agencies with a role in export control include the State Department, which controls arms exports, the Department of Energy, which controls exports and re-exports of technology related to the production of special nuclear materials and the Department of Treasury, which administers certain embargoes.

#### ***Responsible Parties***

The EAR place legal responsibility on persons who have information, authority or functions relevant to carrying out transactions subject to the EAR. This includes exporters, freight forwarders, carriers, consignees and any other relevant party. The EAR apply not only to parties in the United States, but also to persons in foreign countries who are involved in

transactions subject to the EAR.

#### ***Consequences for Violating the EAR***

Violations of the EAR are subject to both criminal and administrative penalties. In some cases, where there has been a willful violation of the EAR, violators may be subject to both criminal fines and administrative penalties. However, for most administrative violations, there is no intent requirement, which means that administrative cases can be brought in a much wider variety of circumstances than criminal cases. Fines for export violations can reach up to \$1 million per violation in criminal cases, \$11,000 per violation in most administrative cases, and \$120,000 per violation in certain administrative cases involving national security issues. In addition, criminal violators may be sentenced to prison time and administrative penalties may include the denial of export privileges. A denial of export privileges basically prohibits a person from participating in any way in any transaction subject to the EAR. Furthermore, it is a violation of the EAR for anyone to participate in an export transaction subject to the EAR with a denied person.

It should be noted that in most cases, BIS reaches negotiated settlements in its administrative cases prior to a formal administrative hearing. Those negotiated settlements are often reached as a result of voluntary selfdisclosures (VSDs) of violations by companies and individuals. BIS considers VSDs to be a significant mitigating factor when negotiating settlements of administrative cases. VSDs

reflect a company's or individual's acknowledgment of guilt and acceptance of responsibility for EAR violations. To encourage VSDs, in appropriate cases, fines and other administrative penalties may be significantly reduced as a result of the fact that BIS became aware of the violations as a result of a VSD. Guidance regarding administrative penalties is provided in Supplement No. 1 of Part 766 of the EAR. In that guidance, some factors, including VSDs, are given "great weight" and are viewed as significantly mitigating violations.

#### ***EXPORT LICENSE REQUIREMENTS***

Many exports of items, including software and technology, require a license from BIS. It is the responsibility of the exporter to apply for a license when one is required under the EAR. License requirements for a particular transaction, as described in the EAR, are based on a number of factors, including technical characteristics of the item to be exported and the item's destination, end-user, and end-use. When determining whether a license is required for your transaction, you should be able to answer the following questions:

- ⇒ *What is being exported?*
- ⇒ *Where is the item being exported?*
- ⇒ *Who will receive the item?*
- ⇒ *How will the item be used?*

#### ***Preventative Measures You Can***

##### ***Take:***

- ⇒ *Check exporters and customers*

## **Registration:**

# **Complying with U. S. Export Controls and Intermediate Deemed Export**

**July 18-20, 2006**

**Doubletree Hotel at Warren Place  
6110 South Yale Avenue  
Tulsa, Oklahoma**

❖ Make Checks Payable to Oklahoma District Export Council

**Mail to:** 301 N. W. 63rd St., Suite 330; Oklahoma City, OK; 73116

Name(s): \_\_\_\_\_ Firm: \_\_\_\_\_

Address(City/State/Zip): \_\_\_\_\_

Telephone/Fax: \_\_\_\_\_ Website: \_\_\_\_\_

E-mail: \_\_\_\_\_ Number of Attendees: \_\_\_\_\_

Two-day Complying with U.S. Export Controls Seminar (\$295.00 per person): \_\_\_\_\_

Two-day Complying with U.S. Export Controls Seminar and  
Half-day Intermediate Deemed Export Seminar (\$395 per person): \_\_\_\_\_

Half-day Intermediate Deemed Export Seminar (\$125 per person): \_\_\_\_\_

Amount Enclosed: \$ \_\_\_\_\_

⇒ *Check end users and end-uses*

⇒ *Review Shipper's Export Declarations*

If you need assistance to determine whether the item you want to export requires a license you should:

1. Check the BIS Website at <http://www.bis.doc.gov>, or

2. Call an export counselor at 202-482-4811 (Washington, DC) or 949-660-0144 (California) for counseling assistance.

Please note that, whether you are the exporter, freight forwarder, consignee, or other party to the transaction, you must address any red flags that arise because taking part in an export transaction where a license is required but not obtained may subject you to criminal or administrative liability. The EAR discuss red flags in a section entitled "Know Your Customer," Supplement No. Three to Part 732, which is available on the BIS website.

### **LICENSE CONDITIONS**

To minimize the potential diversion or misuse of licensed exports, BIS adds conditions to nearly all export licenses. License conditions may, among other things, restrict the way an item is used after export, or it may require certain reports to be made by the exporter. The conditions are created through an inter-agency process that includes BIS and agencies at the Departments of State and Defense, among others. The use of license conditions allows the Government to approve license applications that might otherwise be denied. Once a license is issued, BIS seeks to ensure compliance with the conditions.

### **DEEMED EXPORTS**

Most people think of an export as the shipment of a commodity from inside the United States to a foreign country, but this is only one type of export. Under the EAR, the release of technology or source code to a foreign national, even if the foreign national is in the United States, is also "deemed" to be an export to the home country or countries of the foreign national and may require a license under the EAR. Technology can be released through visual inspection, oral exchanges of information, or the application to situations abroad of personal knowledge or technical experience acquired in the United States. For example, the review of

controlled technology by a graduate student, who is an alien with a valid visa, pursuant to a grant from a private company which will not release the study publicly, may require an export license or license exception since such review could be considered to be a "deemed export".

### **STATE SPONSORS OF TERRORISM**

The United States maintains comprehensive export controls against countries that have been declared by the Secretary of State to be state sponsors of terrorism. Many exports to these countries, even of ordinary commercial items such as sunglasses or perfume that are not typically controlled to other countries, may require authorization from the U. S. Government. BIS or the Department of the Treasury's Office of Foreign Assets Control (OFAC), or in some cases both agencies together, work to enforce these controls. Trade with these destinations should be undertaken with extra caution.

#### ***Regional Considerations:***

It is important to familiarize yourself with the restrictions that apply to the ultimate destination of your export. U. S. law in this area frequently changes in accordance with an evolving foreign policy. The following websites are good resources:

#### ***OFAC's website:***

<http://www.treas.gov/offices/enforcement/ofac/>

#### ***BIS's website:***

<http://www.bis.doc.gov/>

#### ***What is OFAC and What Does it Do?***

The Office of Foreign Assets Control administers and enforces economic sanctions programs against countries and groups of individuals, such as terrorists and narcotics traffickers. The sanctions can be either comprehensive or selective, using the blocking of assets and trade restrictions to accomplish foreign policy and national security goals.

### **TRANSHIPMENT AND RE-EXPORTS**

Parties to an export transaction cannot bypass the EAR by shipping items through a third country. The transshipment, re-export, or diversion of goods and technologies in international commerce may be a violation of U. S. law. For example, an exporter cannot bypass the

U. S. embargo against Iran by shipping an item to a distributor in the United Kingdom and asking that distributor to transship the item to a customer in Iran. Under U. S. law, this would be considered an export to Iran, even though it does not go directly to that country, and both the U. S. exporter and the United Kingdom distributor could face liability.

### **FREIGHT FORWARDER**

Primary responsibility for compliance with the EAR generally falls on the "principal parties in interest" in a transaction, who are usually the U. S. seller and the foreign buyer. However, freight forwarders or other agents acting on behalf of the principal parties are responsible for their actions, including the representations they make by signing an export declaration or other export control document.

To help avoid liability in an export transaction, agents and exporters must decide whether any aspect of the transaction raises red flags, inquire about those red flags, and ensure that suspicious circumstances are not ignored. Both the agent and the principal party are responsible for the correctness of each entry made on an export document. Good faith reliance on information provided by the exporter may excuse an agent's actions in some cases, but the careless use of pre-printed "No License Required" forms or unsupported entries can get an agent into trouble.

### **"CATCH-ALL" CONTROLS**

BIS controls exports of items not only based on their technical specifications, but also based on their intended end-use and end-user. The EAR impose license requirements on exports of items subject to the EAR if the exporter knows or has reason to know that any of the items will be used in an end-use of particular concern to the U. S. Government, such as a missile or nuclear weapons program. These controls are often referred to as "catch-all" controls because they apply to any item subject to the EAR, even if the item would not ordinarily require a license based on its technical specifications.

The U. S. Government has officially notified the public, through the Entity List published in Supplement Four to Part 744 of the EAR, that exports to certain end-users present an unacceptable risk of being diverted to an end-use of concern

and require a license. While this List assists businesses in determining whether an entity poses proliferation concerns, it is not comprehensive. It does not relieve parties to an export transaction of their responsibility to determine the nature and activities of potential customers who may not be on the Entity List (see BIS's "Know Your Customer" Guidance in Supplement No. Three to Part 732 of the EAR, available on the BIS website).

The Entity List is published in the *Federal Register*. The *Federal Register* is the official source of information about organizations on BIS's Entity List. The *Federal Register* from 1995 to the present is available on the Government Printing Office Access Web site. The current Entity List can also be found on the BIS website at <http://www.bis.doc.gov/>.

### **DENIAL OF EXPORT PRIVILEGES**

BIS has the authority and discretion to deny all export privileges under the EAR of a particular domestic or foreign person or company. BIS may impose a denial of export privileges as a sanction in an administrative case, or as a result of a person's criminal conviction of certain statutes (e.g. the Arms Export Control Act), and may also impose temporary denials to prevent an imminent violation of the EAR. The standard terms of a BIS denial order are published in Supplement Two to Part 764 of the EAR.

BIS publishes the names of persons who have had their export privileges

denied in the *Federal Register*. The *Federal Register* is the official source of information about denied persons. A current list of persons denied export privileges can be found on the BIS website at <http://www.bis.doc.gov/>.

### **FALSE STATEMENT/MIS-REPRESENTATION OF FACT**

A party to an export transaction may be subject to criminal and/or administrative sanctions for making false statements to the U. S. Government in connection with an activity subject to the EAR. Most frequently, the false statements are made on an export document or to a federal law enforcement officer. Common types of false statements seen by the BIS are statements on a Shipper's Export Declaration that an export does not require a license (i.e., that it is "NLR") when in fact a license is required for the shipment, or statements that an export was shipped under a particular license number when in fact that license was for a different item. False statements that are made to the U. S. Government indirectly through another person, such as a freight forwarder, are still violations of the EAR.

### **ANTIBOYCOTT VIOLATIONS**

The antiboycott provisions of the EAR prohibit U. S. persons from complying with certain requirements of unsanctioned foreign boycotts, including requirements that the exporter provide information about business relationships

with a boycotted country or refuse to do business with persons on certain boycott lists. In addition, the EAR requires that U. S. persons report their receipt of certain boycott requests to the BIS. Failure to report receipt of covered boycott requests to BIS can be a violation of the EAR. Under the antiboycott provisions of the EAR, certain foreign subsidiaries of domestic U. S. companies are considered to be U. S. persons.

### **SUCCESSOR LIABILITY**

Recent administrative cases have made clear that businesses can be held liable for violations of the EAR committed by companies that they acquire. Businesses should be aware that the principles of successor liability may apply to them and perform "due diligence" in scrutinizing the export control practices of any companies that they plan to acquire.

A properly structured due diligence review can determine whether an acquired company has violated any export laws. This review should examine the company's export history and compliance practices, including commodity classifications, technology exchanges, export licenses and authorizations, end-users, end-uses, international contracts, the status of certain foreign employees who have access to controlled technologies, and the target company's export policies, procedures and compliance manuals. Failure to properly scrutinize a company's export practices can lead to liability being imposed on the acquiring company.

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## ***IronWolf Receives 2006 Governor's Award for Excellence in Exporting***

IronWolf, a manufacturer of attachments for heavy equipment, received the 2006 Governor's Award for Excellence in Exporting.

The Honorable Amy Polonchek, Interim Executive Director, Oklahoma Department of Commerce, presented the award during the 23<sup>rd</sup> Annual Oklahoma World Trade Conference held at the Doubletree Hotel at Warren Place in Tulsa, Oklahoma.

IronWolf is an industry leading and

changing company that focuses on more efficient and cost effective solutions for the construction and mining industries. The attachments that IronWolf manufactures are mounted to wheel-loaders and track type dozers and are used in two product lines, the Crusher and the Slasher. The Crusher deals with concrete, asphalt, rock and frozen soil while the Slasher primarily handles site clearing in forestry applications.

The Crusher mounts on wheel-

loaders, and can literally reduce rock and concrete to almost any size desired. The Slasher is a machine that can mulch standing trees, stumps, roots and ground cover in a single pass. Contractors around the world use the Slasher to clear the way for new development.

The IronWolf Crusher can be found across the United States as well as Mexico and other foreign countries. The Crusher has been well received because of its time saving and labor reducing work rate.

Previously needed tools and equipment have been eliminated from site clearing, strip mining, and concrete recycling.

The Slasher has been primarily sold and marketed to Canada. The Canadian market is a thriving force in the forestry business and the Slasher has helped make the work faster, cleaner, and more environmentally friendly. The by-product of the Slasher is mulch-like and can easily be incorporated into topsoil, resulting in a

stable base that lessens topsoil erosion.

IronWolf Crushers and Slashers stand out as an economic choice for a variety of applications by eliminating the need for costly and destructive solutions such as dynamite blasting and debris burning.

The products IronWolf offers are dynamic tools and an excellent investment for any contracting or construction program.

Interim Executive Director Polonchek also presented five Oklahoma exporters –

Gurkee's International, IronWolf, Joshi Technologies International, Inc., Siemens Applied Automation, and Tulsat Corporation—with the U. S. Commercial Service's Export Achievement Certificate. The certificate program is designed to showcase the important role that exporting plays in our national economy, to highlight the contributions made by exporters to their local communities, and to recognize new and existing exporters.

## June/July 2006 Calendar of Events

<i>Date</i>	<i>Event</i>	<i>Contact</i>
June 6, 2006	<b><i>Minority and Women's Breakfast</i></b> Metro Tech Conference and Banquet Center, Oklahoma City	Aquilla Pugh 405/427-4444
July 18-20, 2006	<b><i>Complying with U.S. Export Controls and Intermediate Deemed Export Seminar</i></b> Doubletree Hotel at Warren Place, Tulsa	918/581-7650 405/608-5302

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